



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

LVO/170670

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 7, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regards to the collection of a Wisconsin Works overpayment of record by levy, a telephone hearing was held on January 27, 2016, at Milwaukee, Wisconsin. At the request of the W-2 Agency the record was held open for 15 days; and at the request of the petitioner, the record was held open for 10 additional days for reply to any additional submissions of the W-2 Agency made during the open records period.

The issues for determination are: **(1) Whether the Department may utilize a levy to collect a past due W-2 overpayment of record; (2) Whether jurisdiction is present to reach the merits of the correctness of the underlying W-2 overpayment determination (\$3,975) of May 6, 2015.**

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Wisconsin Works (W-2)  
[REDACTED] W-2 Agency  
Suite 400, 4<sup>th</sup> Floor  
4201 N. 27<sup>th</sup> Street  
Milwaukee, WI 53216

**ADMINISTRATIVE LAW JUDGE:**  
Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently a resident of Milwaukee County.

2. Petitioner received Wisconsin Works cash benefits from [REDACTED], a W-2 Agency in Milwaukee County, in the period of August 28, 2014, through April 15, 2015. By a notice dated May 6, 2015, the W-2 Agency informed petitioner that she was overpaid \$3,975 in W-2 cash assistance in that time period because she had failed to report that she had moved out of state, and that she had a right to request a fact-finding review from the W-2 Agency. The overpayment apparently arose because the petitioner was determined to be living in Kentucky and getting TANF benefits there, a fact which she admits, at least in part, in her appeal letter (i.e., as to having received TANF from at least May – August, 2014). The notice did not return to the W-2 Agency as undeliverable. The petitioner did not request a W-2 Fact Finding Review from the W-2 Agency at any time thereafter.
3. The agency sent a Repayment Agreement to the petitioner in June, 2015, and a series of three “dunning” notices to petitioner in the months of July, August and September, 2015, reminding her of the overpayment and requesting that she repay the \$3,975 of overpaid W-2. None of these notices were noted by the agency as having returned as undeliverable.
4. By a notice issued on November 29, 2015, the Department of Children and Families, by its collection sub-unit, the Public Assistance Collections Unit (PACU), informed the petitioner that it would be imposing a levy on her wages to recover the past due overpayment of W-2 benefits in an amount due of \$4,006.75. The debt was computed as \$3,975 in overpaid W-2 benefits per the overpayment notice, plus \$31.75 in levy filing and service costs, i.e., a total due of \$4,006.75.
5. On December 7, 2015, the petitioner filed this appeal with the Division of Hearings & Appeals contesting the levy imposition; and asserting that the overpayment determination was incorrect as well.
6. On December 22, 2015, a single payment was received from the petitioner for \$75; and subsequently, \$43.25 more was received on the debt; this left a balance due of \$3,856.75 on the primary claim, plus the \$31.75 service and filing fees, i.e., a total due of \$3,888.25.

## **DISCUSSION**

### **(1) Whether the Department may utilize a levy to collect a past due W-2 overpayment of record.**

Where an individual is subject to a specified overpayment of public assistance (for example, as in this case relating to Wisconsin Works, a class of Temporary Assistance to Needy Families or “TANF” benefit) a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Admin. Code, §DCF 101.23(4).

One method of collection that the department may utilize is the use of a levy under Wis. Stat., §49.195 (3N). Wis. Admin. Code, §DCF 101.23(10)(b)1 provides as follows:

If a debt for repayment of an overpayment under s. 49.148, 49.155, 49.157, or 49.19, Stats., is delinquent under sub. (8) and no review or appeal rights under sub. (2) are pending *and the time for requesting a review has expired*, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.

(Note: Italics added for emphasis.)

Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under chapter 227 of the Wisconsin Statutes. By statute, however, the appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Admin. Code §DCF 101.23(10)(e). The levy is not stayed pending an appeal where property is secured through the levy. Wis. Admin. Code §DCF 101.23(10)(c)(3).

The reason that the issues are limited is that a person must appeal an overpayment within certain time limits after receiving the notice of the overpayment. For W-2 overpayment determinations, the person must request a fact-finding review from the W-2 Agency within 45 days of the notice. See, Wis. Stat. § 49.152(1). The May 6, 2015, initial W-2 overpayment notice informed petitioner of this time limit to request a fact-finding review from the W-2 Agency. See, Exhibit #3. Once the time limit for requesting a fact-finding review has passed, the person no longer can contest whether she owes the amount in the levy appeal. Rather, it is established as a matter of the legal record for purposes of the levy.

Petitioner did not argue that there was mistaken identity or that she paid more of the debt than attributed to her here. I thus must find that the levy was imposed correctly.

Petitioner testified that she did not receive the May 6, 2015, overpayment notice. It was sent to the correct address, however, and there is no evidence that it was returned to the sender by the postal service. I turn now to a further discussion of whether jurisdiction is otherwise present to review the overpayment issue itself, outside of the scope of the levy appeal.

**(2) Whether jurisdiction is present to reach the merits of the correctness of the underlying W-2 overpayment determination (\$3,975) of May 6, 2015.**

Jurisdiction must be present as a matter of law for this administrative law judge to reach the merits of the petitioner's appeal. Without jurisdiction, this ALJ is without the power to reach the merits.

Most disagreements between a W-2 recipient and the agency are dealt with through an administrative dispute resolution process handled by the local W-2 Agency and described at Wis. Stat. §49.152. The jurisdictional paragraph therein reads as follows:

(1) PETITION FOR REVIEW. Any individual whose application for any component of Wisconsin works is not acted upon by the Wisconsin works agency with reasonable promptness after the filing of the application, as defined by the department by rule, or is denied in whole or in part, whose benefit is modified or canceled, or who believes that the benefit was calculated incorrectly or that the employment position in which the individual was placed is inappropriate, may petition the Wisconsin works agency for a review of such action. Review is unavailable if the action by the Wisconsin works agency occurred more than 45 days prior to submission of the petition for review.

Wis. Stat. § 49.152(1).

A parallel jurisdictional provision is also found at Wis. Admin. Code s. DCF 101.23(2)(d). This Code provision specifies that W-2 benefits and wages received under Wis. Stat. § 49.148 that were subsequently found to have been overpaid, as here, are only to be reviewed via the fact-finding review process outlined in Wis. Stat. § 49.152(1), **not** a fair hearing under Chapter 227 of the statutes. Thus, by enacting Wis. Stat. § 49.152, the Legislature has provided that the fact-finding review system under the W-2 Agency is the exclusive method of review. I can only conclude that a Fact-Finder has the sole source of *initial* jurisdiction to decide the issue of the propriety of the overpayment of W-2 benefits. The Legislature intended that the interest the petitioner has in contesting a W-2 overpayment determination is to be protected by the Fact-Finding Review process (including a second level review from DHA after the fact-finding review) and not *otherwise* protected by any other process. There is no right to a fair hearing under Wis. Stat. § 227.42, et. seq., or otherwise.

Therefore, I must also conclude that I lack jurisdiction to reach the merits of the W-2 overpayment determination in this fair hearing, and the petitioner's appeal must be dismissed as to the merits of the underlying W-2 overpayment.

The petitioner may desire to petition for a W-2 Fact-Finding (to [REDACTED] W-2 Agency) to contest the Department's collection methodology and assert inadequacy of notice provided to her as a defense or explanation for not filing for a Fact Finding Review before this appeal. But there is no provision at law for a fair hearing with the Division of Hearings & Appeals on a W-2 overpayment. **Rather, she must request a fact-finding from the W-2 Agency.** If she has such a fact-finding review, and she is again aggrieved by that review, she can only then ask for a second level review (which is a record review provided by the Division on the paper and electronic record of the fact-finding), but not a 'fair hearing' per se.

### **CONCLUSIONS OF LAW**

(1) The petitioner's appeal of the PACU's levy is limited to questions of prior payment and mistaken identity, and she has established no basis for remand of the levy.

(2) Jurisdiction is not present for the Division of Hearings & Appeals to reach the merits of the underlying Wisconsin Works overpayment of record because the petitioner never filed a fact-finding review request with the W-2 Agency and the Division does not possess original jurisdiction over W-2 overpayment grievances; rather, the Division only has the authority to provide second level review of fact-finding review determination record for such requests actually filed with the W-2 Agency and determined by it initially.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein be and the same is hereby dismissed in its entirety.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

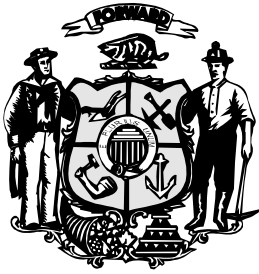
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of March, 2016

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 2, 2016.

Wisconsin Works (W-2)  
Public Assistance Collection Unit